

Minutes: Minority Justice Implementation Committee

(Unofficial Until Approved)

28 January, 2016

**North Dakota Department of
Corrections
3100 Railroad Avenue
Bismarck, North Dakota**

**University of North Dakota (ITV
Location), Abbott Hall Room 119
151 Cornell Street Stop 9024
Grand Forks, North Dakota**

Members Present

Hon. Donovan Foughty
Leann Bertsch
Robin Huseby
Hon. Steven McCullough
Dr. Leander McDonald
Corey Pedersen
Sally Holewa
Scott Davis
Ulysses Jones
Tony Weiler

Members Absent

Bruce Quick
Dean Kathryn Rand
Birch Burdick
Richard LeMay
Professor James Grijalva

Guests

Catherine Palsgraaf

Staff

Lindsey Nieuwsma

Call to Order: 10:01 a.m.

Staff, committee members, and guest introduced themselves. Guests included Catherine Palsgraaf, Citizen Access Coordinator for the North Dakota Legal Self-Help Center.

Tony Weiler moved to approve the minutes from the August 13, 2015 Committee meeting with a correction to page 9, changing “3200” to “3000.” The motion was seconded and unanimously carried.

State-Tribal Forum on Cooperative Agreements

Chair Foughty introduced the topic of State/Tribal Cooperative Agreements. Scott Davis provided an update on progress in getting more agreements in place. Currently, the goal is to work towards providing tribal juveniles with access to state services. Tribal youth once had access to state services in the past and there is work towards bringing those agreements back. Scott Davis believes that there is a consensus among the tribes that an

agreement is needed. Staff asked if there was any research needed to keep progress moving. Scott Davis mentioned an MOU from Utah that the tribes and tribal judges were using as a model, but requested information about how that might apply to North Dakota and its specific legal and jurisdictional boundaries. For example, if a judge in Standing Rock orders a juvenile to be in need of services and seeks to hand jurisdiction over to a judge in Devils Lake, how can that be accomplished within the bounds of North Dakota and tribal law.

Chair Foughty advised contact with Vonette Richter at Legislative Council and said that he could provide a copy of the MOU from Utah. Chair Foughty said that he was invited to participate in the Tribal State Court Affairs Legislative Committee and brought forth the proposition that the state of Utah provided services to tribal youth for certain tribal nations. The tribal nations that participated transferred jurisdiction to the state of Utah to provide services for the tribal juveniles. Chair Foughty indicated that Spirit Lake's need for juvenile services is significant, and that Spirit Lake and Standing Rock have shown some interest in the proposition. In the past in North Dakota, tribal juveniles were sent to YCC, but another agency, like BIA, would pay the bill for those services. In the Utah agreement, the state picks up the bill, which is a significant difference. Chair Foughty's understanding is that in the past, Spirit Lake would send juveniles to YCC and someone would pay for those services, but the juvenile system has changed dramatically since that time. The current proposition is based on the premise that the tribal youth are state citizens, so should receive the same services as non-tribal juveniles.

Scott Davis requested looking at funding from Medicaid, because Medicaid covers some services. Chair Foughty's understanding was that Medicaid will not cover funding in an institution like YCC, but would cover some services when the juveniles left the institution. Leann Bertsch agreed and indicated that North Dakota has a great system that capitalizes on the use of the available Medicaid funds by placing juveniles in facilities when the juvenile is ready where they are able to access Medicaid funds.

Chair Foughty explained that the current discussion was under Leann Bertsch's department, the Department of Corrections, and that she would be in charge of the provision of services under the DOCR.

Scott Davis also requested research on potential BIA involvement for funding or reimbursement. He stated that Dani Doherty out of Aberdeen BIA would be a good contact.

Chair Foughty stated that there is an educational component to this. In North Dakota, the goal in the state system is typically to avoid sending juveniles to YCC and the state court system, and to send them to diversionary programs. The tribal courts do not have those diversionary programs available to them. It may be up to Lisa Bjergaard at the Division of Juvenile Services, or someone similar, to determine which cases to accept into the state services. Leann Bertsch stated that it would be ideal to be able to provide tribal youth with the whole gamut of services currently available through the state system, including

diversionary programs. Chair Foughty agreed and posed the question of how to integrate that into the tribal court systems.

Cory Pederson indicated that funding assistance would likely be easier if tribal youth could be provided with access to the diversionary programs. He stated the YCC, for example, is funded by the state, whereas the diversionary programs receive funding from various sources, including the court and communities. Chair Foughty stated that even if the state was willing to put something towards the juvenile court, it would ultimately be cheaper than sending youth to YCC or DJS. Cory Pederson expressed willingness to go to the tribes if any of the tribes are interested in hearing from the juvenile court to explain what services could be provided to the youth and explore what the tribes would like for services. Cory Pederson gave an example of services provided recently to a Turtle Mountain youth until the tribal social services could step in. Chair Foughty stated that he believes most of the Indian nations would be on board with an MOU, especially for services like assessments that are not available through the tribe.

Cory Pederson asked if there are any raw numbers available of how many juveniles in need of services could be expected. Chair Foughty stated that he believed there were numbers available, but that they would not be a reliable indicator of the need because there is a lot that happens before the juvenile reaches the system, and there is a lack of resources for the tribes to deal with issues such as truancy or other minor offenses that are regularly enforced in the state system. There was discussion about the need to keep all juveniles out of detention because of its extremely detrimental impact on youth. There was also discussion about how the proximity of many of the tribes to state services would make it easy to share services, but the challenge lies in determining logistically how to provide those services.

Staff asked whether Utah was a PL 280 state. Chair Foughty indicated that he believed it was not. Scott Davis and Dr. Leander McDonald agreed. There was discussion about using the Utah MOU as a model. Catherine Palsgraaf asked if Chair Foughty was aware of Utah's criteria for determining which cases to accept. Chair Foughty was not aware, but stated that Utah was in the process of redrafting the agreement and he should be receiving an updated copy soon.

Chair Foughty also stated that there will be a meeting on March 3, 2016 with the legislative committee to discuss the proposition, and suggested a potential pilot with one Indian Nation. Lisa Bjergaard from DJS will be invited to discuss the issue further. Chair Foughty indicated that Lisa Bjergaard was favorable to the proposition, but would want to use the current criteria to determine which cases would be accepted into the state programs.

Scott Davis asked whether it would be beneficial for him to set up meetings in various locations with tribal representatives to discuss the proposition to get an idea of tribal interest. Chair Foughty suggested that the first step would be to see if the tribal courts would be interested in a discussion with the juvenile court system to coordinate. There was discussion about various locations that would be suitable.

Chair Foughty asked if there were any other cooperative agreements for discussion. He indicated that his juvenile court has an MOU with Spirit Lake to allow them to share information. He suggested that MOU's with Three Affiliated Tribes and Standing Rock would be a good idea.

Scott Davis stated that he will be traveling to New Town to discuss law enforcement MOUs on high speed chases, detaining, etc. On February 4, 2016, he will be meeting with highway patrol and tribal law enforcement in New Town to discuss an MOU about highway patrol jurisdiction. He discussed loopholes and challenges that are encountered when non-tribal law enforcement responds to calls or situations that need to be resolved, especially with felony drug warrants. He said it is important that all people recognize and respect a badge, no matter which jurisdiction. Staff asked whether there were any active MOU's in place. Scott Davis said that Sioux County had a cross-deputization agreement but was not sure how active it was and that it was more of a handshake agreement. He also provided an example of warrants for felony drug dealers to highlight the need for MOU's or other informal agreements and described an effort in November that resulted in arrests on several outstanding warrants. He felt that progress was being made towards getting more agreements in place.

Dr. Leander McDonald discussed the tribes' use of banishment for criminal offenses, especially drug offenses. He described one reservation's "two chances" approach which gives offenders a warning for the first offense and bans the offender from the reservation after the second offense, which is a traditional and culturally appropriate sanction. He was not certain on the time period for banishment, but believed it was for three years. He stated that several of the tribes use banishment, Spirit Lake, Turtle Mountain, and Standing Rock, but was not certain about Three Affiliated. Scott Davis said that the tribes are trying to communicate with one another and recognize other tribes' banishments, to keep the banished individual out of other reservations in the state as well. The trouble is that often the individual will then set up nearby a reservation, like in Devil's Lake, Solen or Selfridge, which are "gray areas" for jurisdiction because they are cities and townships of the state. Banishment must be a thoughtful decision because it is a serious consequence and may not cover these "gray areas."

Cory Pederson asked Scott Davis how often banishment is used and whether it has been challenged as a practice. Scott Davis gave an example of a banished individual that was staying nearby a reservation, but was not aware of any challenges to the practice. He stated that the possibility of a lawsuit and unfavorable precedent for the tribe and other tribes is something the tribe must consider when using banishment. Scott Davis stated that tribes outside of North Dakota, such as Cheyenne River, also use banishment. Dr. McDonald said that the issue of banishment came up at the 2015 Summit. A resolution was put together on behalf of the United Tribes of North Dakota and passed, it was also passed by Great Plains and went up to the National Conference of American Indians (NCAI). It received a lot of debate at NCAI, and the conclusion was that it was not a national issue, and that it would go back to the individual tribes for a determination of whether banishment was an appropriate consequence for that tribe.

Dr. McDonald stated that the focus for cooperative agreements should stay on the drug issues.

Related to the drug issue, Chair Foughty stated that in Devils Lake 24% of the babies born has an illegal drug in their system. Rates are much higher in New Town. Scott Davis said that Spirit Lake had 180 tribal babies that tested positive for an illegal drug last year. Robin Huseby asked what majority of illegal substances were present. Scott Davis stated that it was prescription drugs, heroin, meth, and probably marijuana. Chair Foughty said that alcohol presence is not tested, but should be.

Scott Davis described an Attorney General's task force that he is on which is comprised of health officials, law enforcement, etc. to review numbers across the state, including tribes, of babies testing positive for substances at birth. He said the numbers are alarming and it is difficult to change mothers' behavior through legislation. He believes currently in North Dakota, a hospital can hold a baby for up to four days until the baby is stabilized, but the baby is then released to the mother. Other states have criminally charged the mother after birth, which backfires because the mother will then avoid the hospital and have the baby elsewhere. He believes that a solution for Indian Country would be birth control, especially education and awareness. He stated that related problems like STD's and hepatitis C from needle use are also present in Indian Country.

Ulysses Jones added that even if there are no criminal charges for the mother, often paperwork is filed by the hospital to remove the child from the mother's care. They then enter "the system" and have to deal with social services to get the child back, which places additional strains on the mother with treatment and other requirements. Scott Davis also stated that placement is often a problem for these children, especially under ICWA requirements.

Chair Foughty stated that he believes that anyone who goes to a doctor for care should not be criminally charged, which is the current state of the law. The problem is what the next step can be to provide help for the substance abuser.

County-Level Data Collection (Recommendation 2): LERMS

Chair Foughty introduced the topic of county-level data collection and LERMS. Staff requested information about the direction the Committee was going with the data collection and whether the goal was to collect pretrial information. Chair Foughty stated that the Committee previously discussed pretrial assessment tools. He stated that there recently there was a large amount of data on incarceration being collected by Council of State Governments (CSG) for the Justice Reinvestment of North Dakota.

Staff asked about the data collection that CSG is undertaking, whether the Committee will be able to use that data, and whether race data would be analyzed. Leann Bertsch stated that CSG is working with the DOCR, the courts, BCI etc. to collect data. She hopes that data specific to race will be analyzed, and she made it clear to CSG that the problem of overrepresentation of minorities, especially Native Americans, in the system

needs to be part of the reform. In South Dakota, minority overrepresentation was a component of the reform, and they have a pilot project which has shown some preliminary success. Without looking at the overrepresentation issue, we would not be doing justice to the reform effort. Chair Foughty stated that he also emphasized the need to look at minority overrepresentation in the system, especially Native Americans, in his meeting with the CSG representative.

Scott Davis described efforts by Standing Rock and locally to increase re-entry services for incarcerated Native Americans and the challenge of keeping those offenders from reoffending. Scott Davis's wife is involved in efforts to establish greater resources for Native Americans that want reentry services. The tribes are trying to increase the availability of these resources for their members.

Examining Race and Bias in the Oil Patch – Potential Study

Chair Foughty introduced the topic of Race and Bias in the Oil Patch. Staff provided an update on communication with Prof. Archbold and a description of the proposed study and questions posed by Prof. Archbold. There was discussion about the data trends showing that out-of-state offenders are treated more harshly in sentencing than in-state offenders, and the racial make-up of those out-of-state offenders. After discussion of the proposed study, the available data and trends, and the data being collected by CSG, the funds available in light of recent budget cuts, and the longitudinal nature of the study, the Committee determined that the study would be somewhat redundant and would be encompassed by the CSG study.

Evidence-based risk assessment: LJAF PSA-Court Tool

In light of the Committee's decision at the August 2015 meeting to wait for the completion of the national LJAF PSA-Court Tool, Staff provided an update on the status of the tool. The PSA-Court is a pretrial risk assessment tool which determines the level of the defendant's risk to public safety and of failure to appear at trial based on factors such as current charge, current age, criminal history and other factors not requiring an interview. Staff contacted a representative for the tool who said that the tool is currently being tested in twenty-nine jurisdictions, but was not accepting any additional states into the pilot phase because of stringent certification standards to maintain the tool's reliability and validity. Sally Holewa added that she was happy to hear that Kentucky was one of the pilot states for the tool because they have a statewide pretrial services run out of the state court administration, and Kentucky also has a large rural population.

Staff explained that two challenges for North Dakota will be ensuring that a risk assessment tool is valid for the rural population and for the resident minority populations, especially Native American. With respect to the PSA-Court, there are no current studies available on whether that tool is effective for rural and minority populations. Staff also explained that information from the LJAF representative was that the PSA-Court Tool would not be available to the public for another two years.

Staff discussed a potential option of coordinating with CSG or similar group to develop a state-specific tool rather than waiting two years for a tool that may not fit our population.

Chair Foughty said that there are jurisdictions, such as Washington D.C., that have very low pretrial incarcerations. Leann Bertsch stated that there are multiple risk assessment tools available. Because North Dakota does not have pretrial services, it may be beneficial to have someone other than a judge in charge of pretrial assessment initially, such as probation. There was discussion of whether to adopt a tool used by another state without amendment, or whether to craft, norm and validate a tool specific to North Dakota's needs. Leann Bertsch pointed out that North Dakota typically adapts these types of instruments to its own needs and norms and validates the tools that it uses, and that a "quick and dirty" approach was not preferred. Although the process is consuming and takes awhile, it is beneficial to select a tool, start using it, and then collect data and norm and validate the tool.

Staff explained benefits of the Virginia risk assessment tool that she saw, including the factors analyzed; criminal history, current charge, age, steady employment or a primary caregiver, substance abuse history. It was also a two-phase assessment which looked at risk of flight and to the public as well as a classification for services which were appropriate for the individual offender.

Chair Foughty stated that he believed 70% of the people in his local jail were pre-adjudication. If they committed a non-violent misdemeanor, he looks at whether the offender has had an outstanding warrant for failure to appear in the past. If not, the offender will get a PR bond. If they have had a warrant in the past, he will require a bond. He stated that his court's bonds are relatively low, but there are still offenders who have to sit in jail, which wastes public resources. He says he has tried GPS, but the offenders cut the bands off and are charged with a felony.

Judge McCullough stated that the percentages in his area of pretrial detainees vary by district depending on local practices with respect to the bail schedule. He agreed with Chair Foughty that there are defendants who are unable to make bail. He believes in counties that have large jail facilities it would be cheaper to set up pretrial services division in the sheriff's department to decrease the pretrial detention traffic in the jail. There are a lot of players that have to be on board to implement pretrial services, courts, county, sheriff, and will likely require hiring additional employees. Because it is a dramatic shift from the way that things are done now, pretrial services and a pretrial assessment tool would probably be a "big sell."

Ulysses Jones stated that he would also like to see not only work release, but employment search assistance services incorporated with pretrial services for defendants that would like to get back to work and pay off debts, especially to alleviate fees that the defendants encounter. Dr. McDonald added that an educational release should also be included.

Chair Foughty shared a success story about a young woman who was on probation in his court and ended up to be very successful in her education so was released from probation early.

Scott Davis discussed the use of incentives, such as early release from probation, and record expungement for successful, motivated offenders to remove roadblocks to getting housing and employment.

Judge McCullough added on to Ulysses Jones' points on work release that he will, in a post-conviction situation, grant a work release or educational release with a proviso to the extent allowed by the institution. The offender must qualify for the program and adequate space must be available, both at the institution and in the jail. It would further strain those resources if the pretrial population was also added in, because there is already a shortage of spots for the post-conviction participants.

Leann Bertsch discussed the state's incentive to help counties out to relieve pressure on the jails and do the right thing for people. She said that one of the things that they envisioned for potential pretrial services in North Dakota, for the moderate risk individuals, was the use of halfway houses or other services aside from a county jail so the defendant is not just sitting in jail doing nothing. She said that this has been very valuable at the federal level; if the offender did well, stayed clean, etc. they often receive a downward departure in their sentence because they have proven that they can comply. It can go the other way, where offenders will screw up, but it provides an opportunity for the individual to avoid a jail bed and allow the person to show whether they can be successful, and provide them with some support through services. Total release is not the answer for everyone.

Judge McCullough stated that in his experience, the pretrial detention population is not primarily the more serious offenses that would face significant jail time. Typically, the jail population that is driving the numbers up is the A and B misdemeanors with low bail amounts, \$50-\$500. If the individuals are not able to make the low bail amounts, they are sitting in jail for 3 days, 5 days, 15 days. This is a significantly different type of population than the moderate risk level individuals and requires a different solution than the moderate risk level population to solve the problem.

Sally Holewa gave information on her experience in using video kiosks for pretrial services in Michigan. After doing a risk assessment, those individuals who qualified for release would report regularly, daily, weekly, depending on the risk level, to the kiosk, which would scan the individual's hand and face. The kiosks were located at publicly accessible areas, day and night. Although they could not monitor what they were doing during the day, the reports would show that they haven't left the jurisdiction. The kiosks may also have the ability to do breathalyzers.

Dr. McDonald had to leave the meeting early and gave updates on later agenda items. He reported that Professor Grijalva has met with UTTC and the North Dakota Association of Tribal Colleges. The next step is to reach out to each of the tribal colleges to meet with them and determine what can be done to enhance education for individuals with an interest in law. There is also an opportunity for a partnership to fund the education effort and some funding sources have been identified.

Dr. McDonald also shared that with regard to the Tribal Access Program (TAP), he testified a number of times at the national level on the importance of access to information for the purpose of doing background checks for child protection issues. He was not certain that the TAP program came about as a result of that testimony, but emphasized in his testimony several times the importance of the tribes having access to that information to ensure that children are placed in safe homes. He was happy to see that the TAP program was active.

Staff asked how the Committee would like to proceed with a pretrial risk assessment tool and emphasized the importance of the tool in the Committee's goals. The Committee determined that work should continue on putting together a pretrial risk assessment tool specific to North Dakota. Staff will provide several tools for the Committee to review. Andrew Frank provided the Committee with tool examples in the past and current staff will review those and include them with examples to be reviewed by the Committee in future meetings. Staff indicated that it will likely be a process of picking and choosing factors from different tools to create a tool specific to North Dakota's needs.

PASSPORT

Chair Foughty introduced the topic of PASSPORT. Judge Foughty stated that his understanding was that tribal clerks could get direct access to Odyssey and enter information that way. Sally Holewa said that would not work and that she understands that the tribal courts are now working with the AG's office. The other issue was who could register the protection order; only the petitioner can register those orders, not a clerk of court. Sally Holewa was under the impression that the TAP program would allow the tribes to enter their own information.

Catherine Palsgraaf stated that she has a form and set of instructions available for use on the self-help website for users to register a foreign protection order in the state court. It is an affidavit to be signed and notarized by the person who has the protection order. Chair Foughty requested that the form and instructions be distributed directly to the tribal clerks of court.

Sally Holewa asked if there was a list of the tribal courts available; Chair Foughty said that they were included in the lawyer's directory book. There was discussion about changes to the directory. Tony Weiler said that it will no longer be put out by the State Board of Law Examiners and will be in a different format. The State Bar Association will be distributing the new directory and they will ensure that the tribal court information is on the website.

Education Programs

Tony Weiler expanded on the information provided earlier by Dr. McDonald. Tony Weiler met with the Board of UTTC, which is all the tribal chairs, and the tribal education chairs, which are the presidents of the tribal colleges, to discuss traveling to each of the colleges to talk to interested students about potentially attending law school. Tony Weiler has met with Professor Grijalva, Dean Rand, and Erin Shanley, who is still assisting. One of the first things that needs to be done is to collect contact information

from each of the tribal colleges for a point person who can help facilitate meetings with interested students. The goal is for a representative from the law school, from SBAND, and attorneys who are practicing in Indian Country to travel to each of the tribal colleges to meet with interested students and community members about law school. Tony Weiler is in the process of formulating a list of persons who can participate, and is hoping to have a few of them in March and April. Tony Weiler's focus has been on creating the list of persons, while Dr. McDonald and Professor Grijalva and others have focused more on expansion of the tribal college curriculum. The takeaway from the meetings with the colleges was that there is interest for more curriculums for those in criminal justice classes. Professor Grijalva has talked about doing podcasts that can be available to the colleges. Professor Grijalva and Tony Weiler have also met with two of the professors at UTTC in the past to discuss expanding their curriculum and how we can assist with that. Tony Weiler understood that there is an interest by the tribes in strengthening their advocates programs and providing those advocates with more training, similar to a paralegal.

Ulysses Jones asked whether the possibility of internships during the summer been explored. Tony Weiler asked where he thought a potential internship might be, with an attorney, in the tribal court system, etc. Ulysses Jones asked, for example, whether there was a list of internships that were available that was kept at the colleges for those who were interested. Tony Weiler responded that he didn't believe that had been part of the discussion, but was aware that there were internships or externships available through the law school and the law school is always looking to place students in those positions. Those programs are more for someone who is already in law school, but for someone like a high school student who is looking for an internship, the process may be more informal and on an individual basis. The conversation thus far has been that the goal of encouraging students to go to law school is great, but where is the funding. The funding issues, like scholarships, are more issues for the law school.

Tony Weiler also explained that potential minority students likely want to hear from someone who is practicing, who is also Native, who came from the same background and can say "You can go to law school, you can do it," and encourage those students to go to law school. SBAND is currently working on the bylaws for an Indian Law Section of the State Bar. It will be open to anyone who is interested in practicing in Indian Country or the issues that face Indian Country, not just members of the Bar. The hope is that it will be a way to share ideas about some of the issues that the Committee has been talking about. Erin Shanley, in Standing Rock, has spearheaded a lot of the work and will likely help in any way possible.

Limited Scope Forms

Catherine Palsgraaf explained the limited scope forms in the meeting materials. Jeanne McLean, Catherine Palsgraaf's predecessor, and Andrew Frank, former staff for the Committee, talked quite a bit about unbundling and limited representation. Jeanne created the packet of forms as a draft for something that might be helpful to practicing attorneys and potential clients looking to enter into a limited representation relationship. Catherine Palsgraaf distributed a copy of the full text of Rule 11 of the North Dakota

Rules of Civil Procedure, a portion of Rule 5, and Rule 11.2 of the Rules of Court relating to limited representation. Chair Foughty explained that the discussion has been that once there are attorneys who are over the fear of limited representation, there would be more limited scope services available. He believes that there is a lot of education of the bar and judges that needs to occur yet on limited scope representation.

Catherine Palsgraaf stated that the client information sheet listing the potential tasks in a limited representation relationship covers the vast majority of phone calls and requests that have been received at the self-help center. Quite a few callers likely need the representation of an attorney from the beginning to the end, but a large number could make do with a limited scope representation. Tony Weiler asked where the limited scope forms originated from. Catherine Palsgraaf wasn't certain, but believed they were a hodge-podge from different sources and could find out that information.

Tony Weiler said that conversations in this Committee and SBAND's Pro Bono Committee have talked a lot about limited scope representation and how it can be an access to justice tool. He expressed that the work done by Chair Foughty and this Committee has been fantastic pushing this forward. There is a need to get the rule changed to allow for automatic withdrawal, because that is the biggest issue that scares lawyers, especially because many of these cases will involve family law. Chair Foughty stated that he believed judges are much more understanding now, because he would like to have attorneys do some forms as opposed to some of the pro se individuals he sees now.

Tony Weiler understands that the proposed rule drafts on limited scope representation are before the Supreme Court right now, and will be sent to the Joint Committee on Attorney Standards for a Rule 11.2 discussion. They are meeting on the 26th, and will likely allow the rule changes to be added to the agenda. Tony Weiler stated that once the rule changes are made, the goal is to get the forms in line with the rule. He wants to be able to have the forms available on the SBAND website for use by lawyers and guidance for lawyers.

It is also necessary to educate the bar, which is not always easy. It may be possible to have a session on limited scope representation at the annual meeting, a webinar, or something through IVN. It will also be necessary to designate a limited scope expert to educate people. Chair Foughty stated that once there is a comfort zone for the attorney, the attorney is more likely to provide limited scope services, but there is no comfort zone yet. He believes large firms may use it as a marketing and publicity tool to advertise the number of hours it has provided these services and use new attorneys to provide limited scope services. Tony Weiler stated that he would like to see it as a tool that SBAND can use it in its programs, but currently there are not enough attorneys available and they are not helping enough people. The first step is to amend the rule, and that process is moving along. After that change has been made, Tony Weiler is committed to editing the forms and bringing them into compliance with the rule. He stated that Nebraska has done a lot recently related to limited scope representation and he has contacts in Nebraska that he would like to consult before editing North Dakota's forms. Ultimately, the goal is to make the forms available for all lawyers to use.

Catherine Palsgraaf added that she can include something on the Self-Help website that will provide information about limited scope representation to the users.

Leann Bertsch asked if Tony Weiler was aware of any states using limited scope representation that have used governmental or other non-practicing attorneys as a resource. Tony Weiler said that he has not looked into that. The government attorneys in North Dakota, however, are not allowed to give legal advice and represent clients. He was unaware whether other states were more progressive on that issue, but was aware that there are huge corporate counsel business entities that provide a pro bono program. He said that he would like to see North Dakota's pro bono program expanded to corporate and governmental attorneys and explore whether that is a possibility here.

Leann Bertsch stated that in the past, when she was a staff attorney at Legal Assistance of North Dakota, there was a Thursday evening legal assistance volunteer attorney program. Attorneys that worked throughout state government, as well as attorneys from Basin Electric, MDU, would volunteer their time to give pro bono legal assistance. She did recall that there may have been issues, which is probably why the program was shut down. She said that she knew there are attorneys out there who would like to give their time and give back. Tony Weiler agreed and stated that he would like to see that happen. He also told the Committee that there is a National Pro Bono website that is working on a platform that allows people to go into the website, put in a question, and an attorney will provide an answer. He said that we would need to look at the North Dakota ethical rules, but the program is working well in other states and they are trying to get every state involved. This program would be similar to the service that Leann Bertsch discussed and would be a way to provide help to more people. Tony Weiler estimated that SBAND is reaching maybe 10% of the people that are coming to the pro bono program.

Update on Burleigh County Mental Health Collaboration Program

Staff provided an update on the "mental health collaboration program." Burleigh County applied for a BJA grant that will require a 20-30% match from the county. They can either match it in cash or in kind through services. It is a 3 year staged grant where they'd get 150K the first year for development, 250K the second year for implementation, and 100K the third year for expansion. They got the grant in October and they are in the process of establishing a steering committee to identify providers, create protocol, etc. They will send further updates after the committee meets. Chair Foughty suggested that we ask them to attend an MJI meeting after their committee has met.

"Juror Not Found" Report

Sally Holewa provided information about the juror not found report. She said that there has been discussion off and on about expanding the jury source list, but there has not been any proof or non-proof that minorities are being underrepresented in juries. The source list is received in February of every other year and includes voters from the last general election and drivers licenses. The new report, which comes from vital statistics, is created from a death report. A comparison of the death report and jury source list will kick out any matches between the jury source list and the death report. The resulting

juror not found report includes names, address, age, etc. that are not kicked out after a comparison between the death report and the jury source list. The initial report does not include race information, but race information is available. This report is automatically generated, and Sally Holewa requested that IT drop this report into a file periodically. If we are missing pockets of juror eligible communities or pockets of individuals, this report will help us identify after a while who is being missed and help target the discussion about jury source list expansion.

Ulysses Jones asked for clarification about the current source list. Sally Holewa said that they are created from voters from the last general election and drivers licenses. What you will find out from the report is if there are communities that are not voting and do not have drivers licenses. Judge Foughty said that, for example, in Indian country the voting rate and rate of licensed drivers is lower in proportion to the general population.

Tribal Access Program (TAP)

Staff provided information about Tribal Access Program (TAP). TAP was launched by the DOJ in August 2015 to provide direct access to tribes to the NCIC data. Staff asked whether the TAP program would solve problems with the tribes and state sharing information about warrants and protection orders.

Chair Foughty stated that most tribal warrants will not go into the DOJ database because once the warrant is entered, there is an obligation to go pick up the person under warrant wherever they are in the US. If that is not done, there are consequences or penalties. He doesn't believe there will be any tribal law enforcement that will use it to enter for tribal crimes. He believes the tribes may use it for information on individuals entering into Indian country.

Staff asked whether it was likely that the North Dakota tribes would use TAP. Chair Foughty said that it is unlikely that North Dakota tribes would use TAP to enter their warrants because they currently use a program which limits the counties which that information will go to. Chair Foughty stated that he does a lot of extraditions back to Spirit Lake and vice versa.

Sally Holewa provided additional information about TAP and explained that the impetus for the program came from a school shooting incident. The father of the shooter was a tribal member who was under a tribal domestic protection order that prohibited him from possessing firearms. The shooter used his father's firearm for the shooting. The goal for the program was to get the tribes to enter information about tribal domestic protection orders.

Staff asked whether the committee would need to proceed with research on PASSPORT and how to get tribal protection orders into the state system. Chair Foughty stated that it would.

Chair Foughty also stated that he does not believe that North Dakota's data goes into the federal database. Although there has been discussion about getting North Dakota's data into the federal database, he does not believe that has been done.

Catherine Palsgraaf clarified that tribal members will still need to petition to have tribal domestic protection orders registered with the state.

Having no further business, the meeting adjourned at 12:57 p.m.